



February 23, 2001

Ms. Ann Dillon
General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2001-0665

Dear Ms. Dillon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144590.

The General Services Commission (the "commission") received a request to review the Historically Underutilized Business ("HUB") certification of Estrada Hinojosa and Company, Inc. ("Estrada"). You state that you interpret this request to be for Estrada's HUB application and accompanying documents. You claim that the requested information is excepted from disclosure under sections 552.110 and 552.128 of the Government Code. You have also notified Estrada of the request pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released). Estrada has submitted comments and argues that the information at issue is excepted under section 552.110 of the Government Code. We have considered the exceptions you and Estrada claim and reviewed the submitted information.

Section 552.128 of the Government Code provides that:

- (a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program is excepted from [required public disclosure], except as provided by this section.
- (b) Notwithstanding Section 552.007 and except as provided by Subsection (c), the information may be disclosed only:

(1) to a state or local governmental entity in this state, and the state or local governmental entity may use the information only:

(A) for purposes related to verifying an applicant's status as a historically underutilized or disadvantaged business; or

(B) for the purpose of conducting a study of a public purchasing program established under state law for historically underutilized or disadvantaged businesses; or

(2) with the express written permission of the applicant or the applicant's agent.

(c) Information submitted by a vendor or contractor or a potential vendor or contractor to a governmental body in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list, including information that may also have been submitted in connection with an application for certification as a historically underutilized or disadvantaged business, is subject to required disclosure, excepted from required disclosure, or confidential in accordance with other law.

Gov't Code § 552.128. Most of the submitted documents contain information that Estrada submitted in connection with its application for certification as an HUB. Estrada has not given permission for release of this information. Further, subsections (b) and (c) do not apply here. Therefore, we conclude that the submitted documents containing information submitted by Estrada to the commission are made confidential under section 552.128 and must not be released. Accordingly, the commission must withhold most of the documents in Attachment B.

However, some of the documents in Attachment B are not confidential under section 552.128. Some of the submitted documents are letters sent by the commission to Estrada. To the extent these letters do not contain information that Estrada submitted to the commission in connection with HUB certification, these documents are not confidential under section 552.128. We have marked the documents that the commission must release. In some instances, we marked information in these documents that must be withheld under section 552.128 of the Government Code.¹

¹As section 552.128 is dispositive, we do not address the arguments regarding section 552.110. We note that the documents created by the commission which must be released do not contain any information that would be protected under section 552.110 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

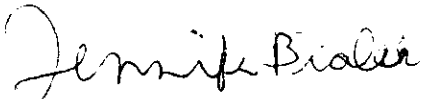
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Bialek". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Bialek".

Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 144590

Encl: Submitted documents

cc: Mr. Lucius Lomax
P.O. Box 547
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(w/o enclosures)

Mr. Robert A. Estrada
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